

# SENATE BILL REPORT

## SB 5405

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As Reported By Senate Committee On:  
Judiciary, February 6, 2007

**Title:** An act relating to judicial orders concerning distraint of personal property.

**Brief Description:** Providing procedures for judicial orders concerning distraint of personal property.

**Sponsors:** Senators Carrell, Kline and McCaslin.

**Brief History:**

**Committee Activity:** Judiciary: 2/02/07, 2/6/07 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5405 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

**Staff:** Juliana Roe (786-7405)

**Background:** Replevin is a personal action taken to recover possession of goods unlawfully taken. In a replevin action, a judge has the authority to issue an order awarding possession of the property being contested to the plaintiff and directing the sheriff to put the plaintiff in possession of the property. The order also contains a notice to the defendant that, if deemed necessary, the sheriff is directed to break and enter a building or enclosure to obtain possession of the property if it is concealed in the building or enclosure.

A party, in whose favor a judgment of a court has been rendered, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within 10 years from entry of the judgment or the filing of the judgment in Washington state. When any judgment of a court of this state requires the payment of money or the delivery of real or personal property, it may be enforced by execution. All property, real and personal, of the judgment debtor, that is not exempted by law, is liable to execution. The writ of execution must be issued in the name of the state of Washington, and among other things, be directed to the sheriff of the county in which the property is situated. When the writ of execution is against the property of the judgment debtor, the sheriff will set the date of sale and serve notice of this on the debtor.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

There is concern that the statutes governing execution of judgments do not contain language similar to the replevin statutes directing the sheriff, if deemed necessary, to break and enter a building or enclosure to obtain possession of the property. In one example, an attorney had an order which allowed the sheriff to break and enter in the same manner as a replevin. A lawsuit ensued in federal court in Seattle and Judge Dwyer ruled against King County, finding that there is no statutory authority for a judge to order a break and enter in the statutes governing the execution of judgments.

**Summary of Bill:** Bill as referred to committee not considered.

**Summary of Proposed Substituted As Heard in Committee (Judiciary):** The sheriff, to whom a writ of execution is directed and delivered, has discretion to execute the writ without delay. If the property at issue is personal property and it is concealed in a building or enclosure, the sheriff is directed to publicly demand delivery of the property. If it is not relinquished and if the order of execution states, the sheriff has the authority to cause the building or enclosure to be broken open and to take possession of the property.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary):** Gives the sheriff discretion in whether or not to publicly demand delivery of personal property or to break and enter into a building or enclosure to take possession of the property.

**Appropriation:** None.

**Fiscal Note:** Requested on January 26, 2007.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Substitute Bill:** PRO: Pursuant to a lawsuit that ensued in federal court, Judge Dwyer ruled that no statutory authority exists for a judge to order a sheriff to break and enter into an individual's home within the statutes governing the execution of judgments. Judges want to give effect to their orders and sheriffs want to have that additional tool to complete their duties as expected. This is supported by all 39 sheriffs departments in Washington. Sheriffs want the authority and power to reunite property with the rightful owner.

**Persons Testifying:** PRO: Craig Adams, Legal Advisor for Pierce County Sheriff's Department; Ken Irwin, Sheriff of Yakima County.